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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/715,730

11/18/2003

George F. Fattman

CV0326 NP

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26079 7590 03/20/2007  
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EXAMINER

HILL, LAURA C

ART UNIT

PAPER NUMBER

3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/20/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/715,730

Applicant(s)

FATTMAN, GEORGE F.

Examiner

Laura C. Hill

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-18 and 21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-18 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10 November 2006 has been entered.

### ***Response to Arguments***

2. Applicant's arguments, see pages 5-8, filed 10 November 2006, with respect to the rejection(s) of the claim(s) under McNally (US 4,831,070), Wagner (US 6,520,943) and Abber (WO 86/00532) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Cilento et al. (US 4,775,374) and Lin (US 5,580,915) as discussed below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 6, 12-14 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Cilento et al. (US 4,775,374). Regarding claims 1-2 and 21 Cilento

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discloses a two component ostomy device 10 (column 2, lines 23-24, figures 1 and 3) comprising a body attaching wafter 11 that is adhereable and separable from a pouch component 40 (column 6, lines 23-29, figures 1, 3-4) at a pressure sensitive adhesive interface 31 (column 6, lines 9-13, figure 3), said interface 31 including a polysiloxane [note that adhesive layer 31 is made from the same ingredients as adhesive layer 31] (column 2, lines 48-54, column 4, lines 50-51 and lines 58-67) coats porous backing layer 32 of component C (column 4, lines 50-55, figure 3).

Regarding claim 3 Cilento discloses 35-65% hydrocolloids (column 3, lines 51-56, column 5, lines 9-17).

Regarding claim 6 Cilento discloses 10% plasticizer (column 4, line 67-column 5, line 4 and lines 17-19).

Regarding claims 12-13 Cilento discloses additional plasticizers improve tack (column 2, lines 48-54) and include mineral oil (column 3, line 64-68).

Regarding claim 14 Cilento discloses an antibiotic medicament (column 3, line 67-column 4, line 6).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 5, 7-11, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cilento et al. (US 4,775,374) in view of Lin (US 5,580,915).

Regarding claims 5 and 7 Cilento discloses silicone/polysiloxane adhesive 31 as discussed above with respect to claim 1. Cilento does not expressly disclose the listed

siloxane adhesives. Lin discloses a polydioganosiloxane pressure sensitive adhesive (column 3, lines 7-10, and lines 64-67) that readily stick to a solid support such (column 8, lines 5-18) and prevent the migration of the adhesive through the support surface (column 8, lines 18-35). One would be motivated to modify the siloxane adhesive of Cilento with the polydioganosiloxane of Lin for increased adhesive performance and to prevent adhesive migration since the references disclose siloxane pressure sensitive adhesives. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the adhesive, thus providing a polydioganosiloxane adhesive.

Regarding claims 8-10 Lin further discloses silicate resins (column 4, lines 25-26) that has silanol functionality (column 4, lines 35-57).

Regarding claim 11 Cilento/Lin disclose the siloxane and resin as discussed above with respect to claims 1 and 8 and thus Cilento/Lin inherently disclose the ratio of resin to siloxane since the discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer.

*Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977). When the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not the reference inherently possesses properties which

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anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980).

See MPEP § 2112- 2112.02.

Regarding claims 16-17 Cilento/Lin do not expressly disclose the peel strength of the adhesive discussed above. However, peel strength is a result effective variable since it is a result of peel rate, probe speed and type of adhesive used (as supported by Lin column 9, line 48-column 10, line 3). Thus, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cilento/Lin with the claimed peel strength values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Regarding claim 18 Cilento/Lin do not expressly disclose adhesive weight values. However these values are known result effective variables since they are a result of the area to be coated by adhesive. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify Cilento/Lin with the claimed coat values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cilento et al. (US 4,775,374). Cilento discloses the plasticizing component as discussed above with respect to claim 12. Cilento does not expressly disclose the percent formulation. However, percent formulation is a well known result effective variable since it is a result

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of the type of material the adhesive will be used on (e.g.—an adhesive on a non-woven film will have a different formulation than an adhesive used on a porous, spongy woven material due to differences in substrate surfaces and the requisite tack for those surfaces). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Cilento with the aforementioned values, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). Moreover, a compound and all its properties are inseparable. *In re Papesch*, 315 F.2d 381, 391, 137 USPQ 43, 51 (CCPA 1963).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill  
Examiner  
Art Unit 3761

LCH

*LCH*

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

